U.S. Department of Justice

Immigration and Naturalization Service

*OFFICE OF ADMINISTRATIVE APPEALS*
*425 Eye Street N.W.*
*ULLB, 3rd Floor*
*Washington, D.C. 20536*

[redacted]

[redacted] Date:

IN RE: Applicant: [redacted]

APPLICATION: [redacted] MAY 12 2000

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

**DISCUSSION:** The application was denied by the District Director, San Antonio, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on July 31, 1941, in Villaldama, Mexico. The applicant's father, [redacted] was born in Texas in January 1913. The applicant's mother, [redacted], was born in Mexico in 1915 and never became a U.S. citizen. The applicant's parents married each other in August 1936. The applicant seeks a certificate of citizenship under § 201(g) of the Nationality Act of 1940 (NA 1940).

The district director determined the record failed to establish that the applicant's United States citizen parent had resided in the United States or its outlying possessions for a period of 10 years, at least 5 of which were after the age of 16 years. The district director then denied the application accordingly.

On appeal, the applicant refers to his younger brother receiving a certificate of citizenship and states he needs a permit for employment in the United States.

The citizenship of a person born outside the United States is determined by the statutes and law in existence at the time of the person's birth. Matter of B--, 5 I&N Dec. 291 (BIA 1953), overruled on other grounds; Matter of M--, 7 I&N Dec. 646 (BIA 1958); Montana v. Kennedy, 278 F.2d 68 (7th Cir. 1960), aff'd, 366 U.S. 308 (1961). Section 201(g) of NA 1940, which was superseded by § 301(g) of the Immigration and Nationality Act (the Act), was in effect at the time of the applicant's birth.

Section 201 of NA 1940 states, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

> (g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, resided in the United States its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of sixteen years...

The applicant submitted a copy of his father's delayed certificate of birth issued in 1937, social security records showing his father's earnings in the United States commencing in 1968 with no earnings prior to that year or prior to the applicant's birth, a census report showing no record of the applicant's father (hereafter referred to as the father) in 1920 and an affidavit from [redacted] stating that the father lived with him in the United States from 1968 to 1972.

Copies of the father's June 1969 sworn statement, a March 1970 affidavit and a June 1970 affidavit contained in the file of the applicant's brother have been included in the record for review. The June 1969 sworn statement is quite vague about where and when

he lived in the United States, but the father specifically states on two occasions in that sworn statement that he did not register for the draft and he did not reside in the United States during the Second World War. This assertion is affirmed in the March 1970 affidavit when he states that he returned to Mexico in September 1940. However, that assertion is contradicted in the June 1970 affidavit when the father states that he spent most of the time in the United States during the years 1941 through 1945. The record is devoid of probative evidence to support most of residence of the father alleged in the record and the affidavits contain contradictory information regarding the father's residence in Mexico. In one affidavit the father states that he returned to the United States in 1936, whereas in the other the father states that he remained in Mexico until about two years after his marriage in 1936.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence.

The applicant has not met this burden of establishing that his father resided in the United States a total of 10 years, 5 of which were after the age 16. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.